IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 11309 of 2005

Between:

1 Mamuduru Penchala Swamy, S/o. Lakshmaiah,
Penchalakona(V), Rapur (M), Nellore District.
2 Atmakuru Sankaraiah, S/o. Rajaiah
Penchalakona(V), Rapur (M), Nellore District.
3 Mamuduru Prasad, S/o. Penchalaiah,
Penchalakona(V), Rapur (M), Nellore District.

..... PETITIONERS

AND

1 The Commissioner Of Endowments, Hindu Religious and Charitable Endowments Department, Andhra Pradesh, Guntur District.
2 The Deputy Commissioner Of Endowments, Hindu Religious and Charitable Endowments Department, Guntur Guntur District.
3 The Assistant Commissioner & Executive Officer Of Sri Penusila Lakshmi Narashimha Swamyvari Temple,
Penchalakona(V), Rapur (M), Nellore District.
4 M. Penchala Swamy, S/o. Narsimhulu,
R/o. Penchalakona (V), Rapur(M), Nellore District.
5 A. Shiva Kumar, S/o. Krishnaiah,
R/o. Penchalakona (V), Rapur(M), Nellore District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ order or direction, more particularly one in the nature of writ of Mandamus, declaring the action of the respondents 1and 3 in utilizing the services of the respondents No. 4and 5 in Sri . Penusila Lakshmi Narshimha Swamyvari temple, Penchalakona (V), Rapur (M), Nellore District and paying the remuneration on Talaneelalu tickets, directly is arbitrary discriminatory and violation of Article 14&16 of Constitution of India and consequently direct the respondents to extend the same benefit to the petitioners herein by utilizing their Services as Barbers in Sri. Penusila Lakshmi Narshimha Swamyvari temple, Penchalakona (V), Rapur (M),

Nellore District, and to pay the remuneration on Talaneelalu tickets directly as per the order of the 1st respondent in Rc. No.D3/65708/2004 dated 28-3-2005.

Counsel for the Petitioners: MR.G.TUHIN KUMAR

Counsel for the Respondent Nos.1 to 3: GP FOR ENDOWMENTS

Counsel for the Respondent Nos.4 and 5 : ..

The Court made the following :

ORDER:

This writ petition is filed seeking a Mandamus, declaring the action of the respondents 1 and 3 in utilizing the services of respondents No. 4 and 5 in Sri. Penusila Lakshmi Narshimha Swamyvari temple, Penchalakona (V), Rapur (M), Nellore District and paying remuneration on Talaneelalu tickets, directly as arbitrary and violation of Articles 14 and 16 of the Constitution of India and consequently direct the respondents to extend the same benefit to the petitioners herein by utilizing their Services as Barbers in the temple in question, and to pay the remuneration on Talaneelalu tickets, directly as per the order of the third respondent, dated 28-3-2005.

The brief facts that are necessary for disposal of the present writ petition are as follows:

The case of the petitioners is that the temple in question was reclassified under Section 6(a)(ii) of the A.P., Charitable Hindu Religious Institutions and Endowments Act, 1987 basing on its income. Only five families of mirasidars are doing bhajantri service in the temple in question, they are, Mamuduru Lakshmaiah, Mamuduru Penchalaiah, Mamuduru Krishnaiah, Atamkuru Mohan and Pandilapalli Ratnaiah. It is the further case of the petitioners that as per the agreement executed by the said Bhajantries on 22.06.1997, the Executive Officer of the temple in question has been permitted to make payment Rs.2/- on each ticket for tonsuring to the said five family members. In view of the judgment of the Supreme Court, the hereditary rights have been abolished and therefore, the temple authorities instructed the bhajantries not to claim any share in the tickets issued for the purpose of tonsure. Thereafter, the above said five persons were given regular pay scales. It is their further case that there are 21 families depending upon the sole income on tonsure work in the temple in question, including the petitioners. Aggrieved by the action of the authorities in

rejecting their claim of remuneration, respondents 4 and 5 filed W.P.No. 23159 of 2004 seeking a direction to the temple authorities to utilise their services and pay remuneration for the same. During the pendency of the said writ petition, the third respondent passed an order dated 28.03.2005 implementing the directions of the first respondent to the effect that the services of the 4th and 5th respondents shall be utilized as barbers and remuneration be paid to them directly. Aggrieved by the same, the present writ petition is filed.

The third respondent filed a counter affidavit stating that in the proceedings dated 20.04.1996 of the Executive Officer the names of Archakas and heridatary mirasidars were mentioned and the names of the fathers of petitioners 1 and 3 were also mentioned but it does not contain the names of the petitioners. Accordingly, the services of the fathers of petitioners 1 and 3 were regularized. As the services of one of the family members of hereditary mirasidars were regularized, petitioners 1 and 3 are not entitled to any right as hereditary mirasidars. Besides the said fact, the petitioners have never done any tonsure work and therefore, they are not entitled to any remuneration.

Respondents 4 and 5 also filed a detailed counter-affidavit on the same lines as that of the third respondent. It is further stated that respondents 4 and 5 are only doing the tonsure work in the temple in question and therefore, they are entitled to remuneration.

Learned counsel for the petitioner contended that the petitioners have been doing the tonsuring work in the temple since several years and that regularization of services of the fathers of first and third petitioners does not mean that the services of petitioners cannot be utilized. He further contended that because respondents 4 and 5 filed a writ petition in W.P.No.23519 of 1995 and obtained orders, their cases have been considered but the same benefit has been denied to the petitioners, who are similarly situated. Hence he prays to allow the writ petition.

On the other hand, learned Government Pleader appearing for respondents 1 to 3 contended that the services of the fathers of first and third petitioners were regularized and they are not entitled to any right as hereditary mirasidars and the petitioners have never done any tonsuring work in the temple in question and therefore, they are not entitled to any remuneration.

Learned counsel appearing for respondents 4 and 5 contended that the since the respondents 4 and 5 are only rendering their services as barbers, they alone are entitled to receive the remuneration for the tonsure work. Therefore, the order under challenge does not suffer from any incurable infirmities.

Admittedly, the services of the fathers of petitioners 1 and 3 were regularized by the temple authorities. As per the decision of the Supreme Court, the hereditary rights have been abolished. If the petitioners are attending to the tonsure work, certainly their cases would have been considered by the authorities. It is the contention of the petitioners that the five families of mirasidars have been doing the bhajantri service in the temple. There is no specific averments as to from what time they have been attending to tonsure work in the temple and receiving remuneration as per the agreement. On the other hand, it is the specific case of the respondents that the temple authorities have regularized the services of the fathers of the petitioners 1 and 3. Therefore, once the services of a member of the family hailing from the hereditary mirasidars were regularized, the other members automatically would loose their right and as such, they are not entitled to any right as hereditary mirasidars. Insofar as the second petitioner is concerned, he is not rendering his services as barber. It is the case of respondents 4 and 5 that petitioners never rendered their services as barbers in the temple in question, but only the fathers of petitioners 1 and 3 were rendering their services.

On the other hand, learned counsel for the petitioner placing reliance on the impugned proceedings contends that a direction was given to the temple authorities to dispense with the practice of paying the remuneration on talaneelalu tickes to the bhajantries with immediate effect and therefore, there was a practice of paying remuneration on talaneelalu tickes to the bhajantries. But it does not mean that remuneration has been paid to the petitioners prior to passing the impugned order. The allegation in the petition is only with regard to the payment of remuneration to the petitioners. Therefore, the question of utilizing their services does not arise. There is no specific allegation in the affidavit with regard to that aspect. Further more, when it is the specific case of the respondents that the petitioners never worked as barbers in the temple and the same has not been denied or disputed by the petitioners by filing any reply, the question of entrusting the tonsure work in the temple to the petitioners does not arise and consequently, the petitioners are not entitled to any relief in this writ petition.

The writ petition is devoid of merits and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed and the interim direction passed by this Court in W.P.M.P.No.14493 of 2005 dated 24.05.2005 stands vacated. However, it is made clear that this order will not preclude the petitioners from making representation to the authority concerned for considering the same as per the rules and regulations.

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15.07.2005

Note :Furnish C.C., in one week.

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To

1 The Commissioner Of Endowments, Hindu Religious and Charitable Endowments Department, Andhra Pradesh, Guntur District.
2 The Deputy Commissioner Of Endowments, Hindu Religious and Charitable Endowments Department, Guntur Guntur District.
3 The Assistant Commissioner & Executive Officer Of Sri Penusila Lakshmi Narashimha Swamyvari Temple,
Penchalakona(V), Rapur (M), Nellore District.
4 Two C.Cs to the G.P., for Endowments, High Court of A.P. , Hyderabad (OUT).

5 2 CD copies

6 1 CC to MR.VIDYASAGAR

7 1 CC to MR.TUHIN KUMAR